

## Standards Committee

<b>Meeting Date</b>	10 November 2016
<b>Report Title</b>	Annual Monitoring Officer Report
<b>Cabinet Member</b>	Not applicable for this report
<b>SMT Lead</b>	Director of Corporate Services as Monitoring Officer
<b>Head of Service</b>	Not applicable
<b>Lead Officer</b>	Director of Corporate Services
<b>Key Decision</b>	<b>No</b>
<b>Classification</b>	<b>Open</b>
<b>Forward Plan</b>	Not applicable

<b>Recommendations</b>	1. That the Standards Committee notes this report.
	2. That there be no further action to review the regime at the present time.

### **Purpose of Report and Executive Summary**

1. This is my tenth annual report, as Monitoring Officer for Swale Borough Council. It provides:

- an overview of Monitoring Officer work in the past year
- an opportunity to review and learn from experience
- a wider context to the importance of good ethical behaviour.

2. This report therefore sets out the Monitoring Officer's statutory responsibilities and summaries how several of these duties have been discharged since my last report. It draws Members' attention to some of the more significant developments.

3. The report reflects upon a further year from November 2015 of the operation of the new standards provisions since the Localism Act 2011 became effective.

4. Overall, it shows that the year to end October 2016 has been one of relative stability and limited activity, however, where appropriate, emerging issues are identified.

### **THE ROLE OF THE MONITORING OFFICER**

5. The role of the Monitoring Officer derives from the Local Government and Housing Act 1989. The Act requires local authorities to appoint a Monitoring Officer. The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of Council decision-making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards. A Summary of the Monitoring Officer's functions is as follows:

Description	Source
Report on contraventions or likely contraventions of any enactment or rule of law	Local Government and Housing Act 1989
Report on any maladministration or injustice where the Ombudsman has carried out an investigation	Local Government and Housing Act 1989
Appoint a Deputy.	Local Government and Housing Act 1989
Report on sufficiency of resources	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution
Consulting with, supporting and advising the Head of Paid Service and Chief Finance Officer on issues of lawfulness and probity.	The Constitution
Advice on whether executive decisions are within the budget and policy framework	The Constitution
Provide advice on vires issues, maladministration, financial impropriety, probity Budget and Policy Framework issues to all members.	The Constitution
Establish, publish and maintain the Register of Members' interests.	Localism Act 2011
Promote and maintain high standards of conduct.	Localism Act 2011
Undertake the assessment of complaints that a member may have breached the Code of Conduct.	Localism Act 2011
Legal Advisor to the Standards Committee when carrying out a local Determination Hearing	Localism Act 2011
Issuing Dispensations to Members regarding disclosable pecuniary interests	Localism Act 2011

## CONSTITUTIONAL REVIEW AND REVISION

6. The Constitution sets out how the Council operates and how decisions are made. It contains the procedures which are followed to ensure that these decisions are efficient, transparent and that those who make the decisions are accountable to local people. The Monitoring Officer is the guardian of the Council's Constitution and is responsible for ensuring that the Constitution operates efficiently, proportionately, is properly maintained and is adhered to.

7. A major review of the Constitution was concluded in May 2014: by far the most significant change was the updated overview and scrutiny procedure arrangements and the revised Council Procedure Rules. Further reviews have been undertaken in March 2016 and October 2016. The key changes were:

- A review of the Local Engagement Forums resulting in a decision to discontinue them.
- The inclusion of a Planning Committee Procedure Note within the Constitution which addressed also a landmark case decision about bias and predetermination.
- Clarification of officer delegations in respect of 106 Agreements
- A revision of the Council Contract Standing Orders

8. In terms of good governance the following concepts remain valid in making sure that the Constitution is designed to promote:

- taking informed, transparent decisions and managing risk
- engaging stakeholders and making accountability real
- members & officers working together to achieve a common purpose with clearly defined functions and roles
- effective leadership throughout the Council and being clear about the executive, non-executive and scrutiny functions and the respective roles and responsibilities
- positive relationships between members and the local community including the voluntary and community sector must be clear so each knows what to expect of each other and what to do when things go wrong
- the Council's culture is open and outward facing with a clear focus on the needs of local communities
- Good, fair, decision making on merit and not influenced by personal or private interests

9. Equally it is important for there to be some external validation of the governance arrangements. I would draw attention to the following report.

10. In September 2016, the Council's external auditors Grant Thornton provided its Audit Findings for Swale Borough Council. This was considered in detail by the Audit Committee. The Council again received an unqualified audit and value for money opinion. The external auditors commented:

"Your financial statements have been produced to a very high standard. We have not identified any adjustments to the primary financial statements."

and

"we are satisfied that in all significant respects you had proper arrangements to secure economy, efficiency and effectiveness in your use of resources"

11. This reflects extremely well on the organisation's governance procedures and the work of the finance team supported by all managers.

## **LAWFULNESS AND MALADMINISTRATION**

12. The Monitoring Officer is the Council's lead adviser on issues of lawfulness and the Council's powers and, in consultation with the Head of Paid Service and Chief Financial Officer, advises on compliance with the Budget and Policy Framework. Part of this role involves monitoring reports, agendas and decisions to ensure compliance with legislation and the Constitution. At the heart of this work is the agenda of and reports to the Cabinet. Cabinet reports and decisions are made publicly available for Councillors either electronically or by way of a paper version. Cabinet decisions can also be viewed by Members of the public through the Council's website:[www.swale.gov.uk](http://www.swale.gov.uk)

13. The Cabinet has met on 11 occasions since November 2015. In each case the Strategic Management Team has reviewed the agenda and associated draft reports. This clearance process is an important part of ensuring corporate working in an effective Council and provides a vital opportunity to discuss aspects of reports or decisions that require 'buy-in' from, or have implications across, services.

14. All Heads of Service receive draft agendas and Finance, HR and Legal officers have the opportunity to contribute to reports under 'Implications'. Strategic Management Team reviews the Forward Plan as a standing item on its agenda and seeks advice from the Head of Human Resources, Head of Finance and the Head of Legal as appropriate. This enables Strategic Management Team to review early in the process reports to be presented to the Cabinet. This has enhanced earlier input and through informal working with the Cabinet has ensured that a clear set of recommendations are presented to the Cabinet for consideration and decision.

15. Ultimately, if the Monitoring Officer considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration a report must be submitted to the Full Council or, where appropriate, the Cabinet after first consulting with the Head of Paid Service and Chief Financial Officer. Any proposal or decision that is subject to such a report cannot be implemented until the report has been considered.

16. The sound governance arrangements, processes and procedures operated by the Council ensure that the power to report potentially unlawful decision-making is rarely, if ever, used. The Monitoring Officer has not had to issue such a report.

## **GOOD GOVERNANCE AND CODE OF CONDUCT**

### **National Context**

17. Last year I referred to tragic cases in Rotherham as an illustration of what happens when governance is bad. The messages were very sobering for local authority governance. I have not repeated those messages this year but they remain relevant and reminds all of us charged with governance to be vigilant.

18. In July this year I attended a Monitoring Officer Standards Conference at which the national perspective was that standards issues are not going away and numbers are increasing. To some extent this reflects the emergence of one policy groups on councils (who have less of an understanding of traditional local government decision making processes) but also the issues associated with social media. This has to be seen against the lack of powers to effectively sanction members and the poorly written nature of the legislation. Something you will all be aware of that I have highlighted at every opportunity.

19. David Prince, a former member of the Committee on Standards in Public Life and former Chief Executive of the Standards Board for England gave his perspective. He stressed the importance of behaviours not processes and to remember that most authorities are capable of self-regulation. The latter is something that as Monitoring Officer I am keen to promote.

20. He also acknowledged the difficulties for Monitoring Officers in a period of reduced resources and competing priorities. It is extremely difficult for MOs to be proactive in these circumstances. The key Nolan principle (these principles are replicated in the legislation and produced in our Code of Conduct) which underpins members' behaviour is that of leadership and the holders of public office exhibiting the behaviours expected and to be willing to challenge poor behaviour wherever it occurs.

21. There was also a technical session based in current law and emerging case law which is of particular interest to MOs. For me it was the following:

- Article 6 of the European Convention on Human Rights, the right to a fair trial, does not apply to the Standards regime as only a reprimand can be imposed. However, common law principles of natural justice still apply.
- The flexibility that exists in applying the regime and processes provided it is fair, in particular, whether there are alternative approaches such as written representations rather than a full hearing.
- The regime only applying where the member is acting in their official capacity.
- The vicarious liability of the local authority for the actions of its members. The case of Bude Stratton Town Council illustrates the pitfalls and it is clear that no councillor is a free agent operating on their own behalf and that councillors must act in a way which meets the implied contractual obligation of providing a reasonable, congenial working environment. There has to be a mutual bond of trust between councillors and officers.

- Clarification of disclosable pecuniary interests and a detailed discussion on the use of the word 'in' used in the legislation. The view is that I have an interest in my house but not my neighbour's house. "In" does not mean "about" or "relating to", so the interest must be direct, however, a recent case involving Wiltshire Council reinforced the position that a council decision can still be overturned on apparent bias, we have amended agenda papers to reflect the need to consider this latter aspect
- Sanctions or more accurately the lack of them! This was the particular area of déjà-vu and the lack of real sanctions for the most extreme breaches of the Code still remains a significant cause for concern. There is no immediate light at the end of this particular tunnel except that as a result of Cllr Buckley of Saddleworth PC parliamentary questions were raised by the local MP and the DCLG are considering whether to consult further on this area of the regime. Cllr Buckley was convicted of downloading indecent images but would not step down and all the parish council could do was to remove him from committees. Just typing his name and the PC into Google gives a flavour of what the impacts of this are for the council and the community it serves.
- It is also important to remember that outside of the standards legislation there are various other pieces of legislation which may potentially impact on member behaviour: Public Order Act (using threatening or abusive words or behaviour within hearing or likely to cause harassment, alarm or distress), Malicious Communications Act (sending indecent, grossly offensive, threatening electronic communication) and Communications Act (sending grossly offensive, indecent, obscene, menacing or false electronic communication for the purpose of causing annoyance, inconvenience or needless anxiety)
- Experience has shown that the Police are unlikely to be interested in prosecuting criminal offences under the Localism Act for failing to register DPIs.

22. For the benefit of new members to the committee I have included the following cases which I have previously reported to give an overview of some of the potential issues with the current standards regime.

23. There have been a number of high profile cases; in particular one in Wigan, where a member used council provided equipment amongst other things to call sex lines, which hit the national papers where the shortcomings of the sanction regime have been highlighted. The Chair of their Standards Committee is quoted:

*"I don't think it's wrong to say that we are limited in what we can do because the sanctions have already been exhausted previously".*

24. Interestingly this particular member was well known to Standards for England having been previously suspended and disqualified. The latter did not prevent him from being elected once his period of disqualification (under the old sanctions regime) was served and it would appear that he had no regard to the reputational damage done to the Council. Irrespective of which regime is in place, it serves to illustrate that it is very difficult to deal effectively with that tiny group of members who behave in this way. Part of the debate after the matter had been considered was whether legislation might be introduced for "recall for councillors" in the same way that such provision is being considered for MPs.

25. There has been no real progress on this nationally since I last reported; however, there are a number of authorities trying to promote this. In particular, Kingston LBC has been considering whether voters should be given the power to remove councillors from office where it is proven that they have abused their positions. Any scheme has no statutory basis at present. This arose where a councillor pleaded guilty of dishonestly or fraudulently claiming council tax benefits between January 2008 and 2010. The councillor pleaded guilty to seven charges two weeks after local elections where he had stood as a candidate. His political group removed him and he continued to sit as an independent up until the next election whilst Kingston Council carried out a prolonged investigation into his finances. Had he been re-elected the council could well have had a convicted benefits claimant for the next four years without any recourse for dismissal. Councillors can only be disqualified if they are convicted of a crime which carries a prison sentence of at least three months. The offences in this case carried a maximum jail term of six weeks.

26. Another case reported nationally that a shamed councillor refused to quit despite a benefit fraud against his own council. The Councillor and his wife who swindled £25,000 of taxpayers' money in a two year benefit fraud avoided jail and therefore were not automatically disqualified from office.

27. April 2015 saw the first case decided in the Magistrates Court on the issue of participating in a discussion and vote without reasonable excuse despite having a Disclosable Pecuniary Interest (DPI).

### **R v Flower**

**Facts:** Cllr Flower listed as a pecuniary interest a non-executive directorship of a housing charity, for which he received remuneration payments. He was present at a meeting about the proposed East Dorset Core Strategy and voted at the meeting. The housing charity had responded to a consultation about the Core Strategy and owned land which was being considered for development through the Core Strategy. Cllr Flower had previously attended a meeting of the charity at which the long-term future of the land had been considered. He was charged with an offence under the Localism Act 2011 for participating in a discussion and vote without reasonable excuse despite having a DPI in a matter being considered.

**Findings:** Cllr Flower was guilty of the offence. His defence was that the matters discussed at the meeting were of a broad nature and did not concern detailed issues of planning and ownership did not amount to 'reasonable excuse'. It was not right that the Core Strategy had no relevance to pecuniary matters, and it was not a defence that he did not obtain any direct benefit from the vote. The judge held that it would have been reasonable for him to have consulted the Monitoring Officer and could have gained a dispensation. He was under a duty not to participate and vote. The judge noted that Cllr Flower was of good character and the court received a number of character references speaking highly of his abilities, his conscientiousness and his years of public service.

**Decision:** Conditional discharge for six months and an order to pay £930 in costs.

28. The advent of social media has probably moved at a faster pace than the legislation and has given rise to much debate on whether matters on social media fall

outside the Code of Conduct and this is a matter which will need to be kept under review. There are those who suggest that such matters are outside the Code but I would suggest that each case would need to be considered on its merits particularly the capacity in which the social media was being used. Indeed, I have recently issued a reminder to members where I thought it timely to remind councillors that they must be particularly careful in the way they communicate on social media where there is any suggestion that they are acting in an official rather than a private capacity. Posts and comments made, the sharing of other's posts, retweeting of information etc. are more likely to be viewed as having been made in an official capacity where the author specifically identifies him/herself as a councillor.

29. In particular, any councillor must not post, share or retweet on social media any inappropriate, abusive, bullying, racist, or defamatory messages. Council policies relating to confidentiality also may apply and confidential information should not be posted. It is important that you stay within the legal framework and be aware that the laws relating to defamation, copyright, data protection and Freedom of Information apply.

30. The following two cases illustrate the importance of considering very carefully what is said in electronic communications when balancing the importance of freedom of political expression:

#### **Cllr John Copeland v West Lindsey District Council Standards Committee**

**Facts:** Cllr Copeland was a Parish Councillor. He was found by the Standards Committee to have breached the Parish Council's Code of Conduct by referring, in a number of emails, to a member of the public as a grumbler and a geriatric, which had failed to show respect to that person and had brought his office or authority into disrepute. Cllr Copeland's appeal was successful.

**Findings:** it was not 'necessary' within the meaning of Article 10(2) of the European Convention on Human Rights to interfere with Councillor Copeland's freedom of expression by sanctioning him for his comments. The unidentified individual had a remedy in defamation, if there was damage to his reputation, which was doubted. Proceedings before the Standards Committee were a 'wholly disproportionate response'.

**Decision:** The Standards Committee's decision to censure was set aside.

#### **R (Benjamin Dennehy) v London Borough of Ealing**

**Facts:** Cllr Dennehy posted on a blog which he maintained comments about residents of Southall in which he stated:

'it is a largely Indian community who say they deplore this behaviour but yet it is that very same community that harbours and exploits their own people in squalid third world living conditions... the exploding population of illegal immigrants is a constant on the public purse. Illegal immigrants don't pay tax. The legitimate immigrants exploiting them in the squalid bed sheds don't pay tax on their rental income. If these are the sorts of people who exploit the desperate what other scams are they perpetrating I ask?



Criminality is endemic in Southall'. He declined to issue an apology when a number of Southall residents complained because they were offended by the statements.

**Findings:** The Cllr failed to treat others with respect and brought the Council into disrepute because the tone and much of the content was inappropriately and unnecessarily provocative, and the comments about Southall residents were in a different part of the blog from that which raised legitimate topics of political debate. The comments were not the expression of a political view, but a personal and generic attack on a section of the public. The subjects of the speech were not politicians but ordinary members of the public, so the comments did not attract the higher level of protection applicable to political expressions. Accordingly, sanctioning the Cllr was justified and proportionate under Article 10 (2) of the Convention.

**Decision:** The Standards Committee's decision that the Cllr breached the code and should issue an appropriate apology was upheld.

31. Other cases of note have considered human rights legislation particularly the right to freedom of expression. The standards regime in Wales remains the old one and so there have been a number of cases which have sought to clarify the position. It is clear that political comments benefit from a high degree of protection, mere personal abuse does not. In one case a sarcastic and mocking blog ridiculing fellow councillors over a long period was disrepute but there was no breach, it was not seen to be personal abuse and politicians should have thick skins. In another case comments made on a blog about a particular community were found to be an unjustified and a personal attack on a section of the public and there was no protection under human rights. One final case involving the Leader of Clwyd County Council highlighted again that politicians have to have thick skins but there must be a mutual bond of trust and confidence between officers and members.

### **Local Context**

32. I have continued my pro-active role in ensuring good practice, good procedures and good governance within the resource available. Where I have seen evidence which tests the boundary of good governance I have sought to engage both the individual Member and Group Leaders to ensure that there is some discussion and shared ownership of where the correct threshold of acceptable or appropriate conduct or good governance lies. This dialogue will continue and I remain grateful for the support of Group Leaders in discussions on these issues. I am also pleased to record once again that the occasions where I have sought to do this have been very few.

33. There have again been a number of issues relating to planning which is not surprising given the quasi-judicial nature of the work. Matters raised by Members tend to relate to declaration of interests. The introduction onto agenda fronts reflecting the need for members to consider bias and predetermination has assisted in clarifying issues that members need to consider when part of the decision-making process.

34. The Head of Planning reviewed planning committee procedures and provided updated training for planning members (details in the separate report on member

training) and further improvements continue to be considered. I have also given individual advice to members on:

- predisposition, predetermination or bias and the Code,
- social media,
- the implications of the Localism Act, the nature of interests to be declared and representation on outside bodies
- the impact of the 2014 Openness of Local Government Bodies 2014 which enables members of the public to record meetings has also been monitored and audio recording of Cabinet, Council and JTB has been introduced.

35. I have provided informal advice to parish councillors on potential conflicts of interests and the nature and extent of disclosable and non-disclosable pecuniary interests. Increasingly the issues tend to be one of bias and predetermination. I have also explained further the remit of the Monitoring Officer in relation to parish councils. Often matters are raised which relate to how the parish council conducts its business as opposed to individual behaviour and conduct of members. I have seen an increase in enquiries of this type since the parish elections last May and have sought to remind those councils affected of the need to provide support and training on internal processes to their members to avoid matters escalating into ill-founded tit for tat allegations

36. Good governance involves providing procedure notes, guidance, developing and implementing protocols and providing briefings and enabling effective support to Councillors in their different roles including Member training. The purpose of these briefing notes is to provide readily accessible reference materials for members. I have issued general advice to members on media issues.

37. The Council adopted its new Code of Conduct in May 2012, effective from 1 July 2012 and this included revised arrangements for the Standards Committee, registration and disclosure of interests and dispensations. It is fair to say that the framework, given the statutory limitations, is working well but there is still concern over the lack of sanctions and a debate over when a member is acting in an official or private capacity, (see national context above).

38. Within the spirit of the lighter touch approach, the Council has sought to have as consistent and proportionate approach across the Borough's parish and town councils as possible. The lateness of the publication of the regulations covering the declaration of disposable pecuniary interests meant some parish councils choose to adopt a Code prepared by the National Association of Local Councils (NALC). From an administrative point of view this is manageable within the resources available to me; however, I do appreciate that each authority can agree its own code and what other interests to be included in the register as well as Disclosable Pecuniary Interests.

39. The Registers of Interests required have been established and maintained. This includes all parish or town councils within the authority's area. The lack of a standard definition of 'interests other than pecuniary interests' and the degree of local discretion, if not confusing, created scope for considerable local variation. In introducing the new arrangements, I sought to minimise variation but this did not always prove possible. One of the key issues raised has been the requirements for publication of the registers on the Councils website; there were initially issues with the capacity of our modern.gov

system to accommodate the requirements to publish the registers. These have been resolved.

40. The Department for Communities and Local Government issued guidance on openness and transparency on personal interests in March 2013. Key points still worth noting are:

- Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- The registration of personal interests by a councillor should be guided by this principle.
- Confirmation that spouse's or civil partner's name does not need to appear on the register of Interests – for the purposes of the register, an interest of a spouse or civil partner is the councillor's disclosable and non-disclosable pecuniary interest.

41. Further guidance was issued in September 2013. The guidance was revised to make it clear that councillors should treat Trade Union membership as a disclosable non-pecuniary interest. For Swale Borough Council and those parish councils which adopted the Swale Code or the NALC Code, this merely reflected the existing position. For one parish council, which adopted a 'passive' approach to the registration of such interests, I drew the new guidance to their attention and asked that they consider amending their code to reflect the new guidance.

42. During the period end October 2013- October 2016, there have been a number of matters that have been considered that could potentially have come within the standards framework; I have included all cases again for the benefit of new Committee members

43. The analysis of matters follows and includes anonymous details in the Table below.

**Historic cases –October 2013 –October 2014**

<b>Nature of Complaint</b>	<b>Action</b>	<b>Commentary</b>
Conduct of member in dealing with Parish Clerk	Discussed with Independent Person – referred for investigation	Hearing held. No breach Para 9 of the Code. Breach of Para 10 of Code, recommendations made to PC for training of all parish members and Clerk. Followed up with meeting with Chairman and Clerk.
Conduct of parish council meeting in relation to representations made on a planning application by partner of one of the parish councillors who was alleged	Discussed with Independent Person, Monitoring Officer filter applied to seek informal resolution	Potential breach of Code of Conduct. Monitoring Officer and his Deputy attended a meeting of the Parish Council to provide training on the need to ensure that

<p>to influence the response given.</p>		<p>the processes adopted in future were open and transparent and improvements were suggested on how to record the meeting. The Parish Council agreed to write to the complainant advising that they had reviewed and improved procedures to ensure matters of this type would not be subject to future complaints.</p>
<p>Multiple complaints received in relation to issues surrounding members who had moved from the Swale Area</p>	<p>Discussed with Independent Person</p>	<p>Private decision not covered by Code of Conduct. No breach.</p>
<p>Complaint regarding alleged abusive behaviour of member at Planning meeting</p>	<p>Discussed with Independent Person, Monitoring Officer filter applied to seek informal resolution</p>	<p>Public apology given.</p>
<p>Questioning decision relating to co-option of parish councillor</p>	<p>Monitoring Officer filter applied</p>	<p>Complaint not within remit of Standards regime: related to parish council as a whole and how it dealt with its administrative functions.</p> <p>This matter has been very time consuming as on numerous occasions the complainant refused to respond to Monitoring Officer's reasonable request for clarification of the nature of the alleged complaint and potential breach of the Code of Conduct. Instead he chose to circulate statements to members, MP and the press that Monitoring Officer was "doing nothing".</p> <p>He also complained to the Local Government Ombudsman that the Monitoring Officer had refused to investigate his</p>

		complaint against a member of a parish council. The Ombudsman confirmed that she will not be investigating the complaint as she saw no evidence of fault in the way the Monitoring Officer made his decision.
Councillor alleged to have not dealt with representations fairly, appropriately and impartially, not treating people with respect.	Discussed with Independent Person – referred for investigation	Investigating Officer report received and informal resolution agreed by way of a private apology
Multiple complaints following a Planning meeting to discuss SBC response as a consultee on a KCC planning application.	Complaint initially dealt with through Council's complaint system as alleged breach of Code was a minor part of the complaints raised.  Those complainants who referred the matter on through the formal Code of Conduct process were asked whether informal resolution possible.	Public apology issued.  (This was another resource intensive case)

**New complaints November 2014 – October 2016  
(n.b. all these relate to one Parish Council)**

<b>Nature of Complaint</b>	<b>Action</b>	<b>Commentary</b>
Conduct of member in dealing with Parish Clerk (two separate complaints)	Discussed with Independent Person – referred for investigation	Investigating Officer report awaited
Councillor alleged to have not dealt with representations fairly, appropriately and impartially, not treating people with respect including allegedly making racist remarks.	Discussed with Independent Person – referred for investigation	Investigating Officer report awaited
Councillor alleged to have not dealt with representations fairly, appropriately and impartially, not treating people with respect	Discussed with Independent Person – referred for investigation	Investigating Officer report awaited

## **CODE OF CONDUCT FOR EMPLOYEES**

44. The Constitution includes a Code for Employees, which has been recently updated and aligns closely with the register of interest requirements under the old members Code of Conduct. Our arrangements were subject to an internal audit which received a substantial level of assurance and I do not propose to take any further action on this subject at the present time.

## **OVERSEEING REGISTRATION OF OFFICER INTERESTS**

45. The Monitoring Officer writes to Councillors, Officers of the Management Team or officers on certain salary grades, or appointed by statute, each year and asks them to complete and sign an annual declaration on related party transactions. This captures transactions between the individual; members of the individual's close family or the individual's household; or partnerships, companies, trusts or any entities (e.g. charities) in which the individual or their close family of same household has a controlling interest. This declaration is asked for in accordance with FRS9 (Related Party Transactions), as contained within the Code of Practice on Local Authority Accounting in Great Britain 1998.

## **WHISTLE BLOWING (Protected Disclosure Policy)**

46. The whistle blowing policy of the Council is publicised throughout the organisation on the internal Intranet. As a first step, concerns should be raised with the employee's immediate manager or their superior. This depends however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. If this is not practical or appropriate then they can be raised with the Monitoring Officer or the Head of Audit. Where appropriate, the matters raised maybe investigated internally, be referred to the external auditor or form the subject of an independent inquiry. The Monitoring Officer has overall responsibility for the maintenance and operation of this policy. I am currently discussing with Internal Audit the review of the policy and procedures to bring it up to date and to align it with our partners within Mid Kent Services.

## **CORPORATE COMPLIANCE WITH LEGISLATION**

47. Legal updates, including details of new legislation, are circulated to relevant officers within the organisation. Those officers then circulate legal updates including new legislation to Members when they consider this to be appropriate. All reports have a compulsory heading in which the author has to consider legal implications and if there are likely to be legal implications the author has to seek comments from the Head of Legal. The same procedure follows for any financial implications (the Head of Finance) and human resources (The Head of Organisational Development).

48. As the Council responds to the changed funding regime for local government there will be an increased need for robust due diligence of legal and financial implications of more innovative projects as they come forward.

## **PROTOCOL ON COUNCILLOR/OFFICER RELATIONS**

49. The Protocol on Councillor/Officer Relations is contained within the Constitution. This sets out what is expected of Officers and what is expected of Members. When the relationship between Members and Officers breaks down, or becomes strained, attempts should be made to resolve matters informally through conciliation by an appropriate senior manager or Members. Officers will have recourse to the Council's Grievance Procedure or to the Council's Monitoring Officer, as appropriate to the circumstances (as set out in the Constitution).

50. In the last period there have been no complaints of this type to the Monitoring Officer.

## **SUPPORT TO COUNCIL, CABINET, SCRUTINY AND COMMITTEE MEETINGS**

51. The distribution and publication of committee reports, agendas and decisions is central to good governance. This includes:

- Distributing and publishing all agendas within five clear working days of the meeting taking place and ensuring that all agendas are compliant with the access to information rules and exempt information is marked up accordingly.
- Advertising public meetings at least five clear days before the meeting date.
- Ensuring that papers are available to the public either through the website or from district offices and libraries.
- Publishing minutes as soon as possible after the meeting, in particular Cabinet Minutes are published within 3 clear days of the meeting.
- Ensuring that petitions are handled in accordance with the Council's constitution,
- Ensuring that meetings are accessible to the public.

52. One of the explicit aims of the Local Government Act 2000 was to streamline the decision making process to allow Council's to focus on service delivery.

53. From **1 November 2015 to 30 October 2016** the following meetings were serviced:

<b>Name of Meeting</b>	<b>No. of meetings</b>
Annual Council	2
Audit	4
Cabinet	12
Cabinet Delegated Decisions	5
Council	7
General Licensing Committee	2
General Purposes Committee	2
Licensing Act 2003 Committee	1
Licensing Sub-Committee	8

Local Development Framework Panel	2
Member Development Working Group	4
Planning	17
Planning Working Group	10
Policy Development and Review Committee	7
Rural Forum	2
Scrutiny Committee	11
Standards Committee	1
Standards Hearings Sub-Committee	0
Swale Joint Transportation Board	4
<b>Total</b>	<b>101</b>

54. This represents 101 meetings in total. This compares with 111 in the previous year and 107 the year before. The most notable difference for this period, compared to the same period last year is the increase in the number of Licensing Committee hearings and this is expected to be a continued trend as Licensing takes on responsibility for hackney carriages. There has been a slight reduction in Planning meetings and this reflects the part year effect of moving back to a four-weekly Committee cycle and a decrease from 15 to 10 of the Planning Working Group. The meeting numbers do not reflect the additional meetings administered by the Democratic Services Team including four external charities and the Youth Forum as well as pre meetings and agenda planning meetings. The volume of meetings represents a substantial commitment of both Councillors' and officers' time and resources. It is of great importance that meetings constitute an effective use of time and resources; that they add value to corporate effectiveness and help in meeting the aims and objectives of the Council.

## **MEMBER TRAINING AND DEVELOPMENT**

55. It is essential to good governance that Members are supported in their roles to make good decisions which underpin our corporate governance and reputation. The Council has established a cross-party Member Development Working Group (MDWG) with support from Democratic Services to develop the Member Training provision. Further information is provided in the annual report on Member Training and Development submitted to this Committee.

## **USE OF COVERT SURVEILLANCE**

56. Since April 2010, in accordance with revised Codes of Practice I am obliged to report the number of occasions the authority has used covert surveillance. The Office of the Surveillance Commissioner (OSC) advised that it was appropriate to include such information within my Annual Monitoring Officer report to members. The Regulation and Investigatory Powers Act (RIPA) policy and guidance note has been updated to reflect recommendations of the OSC and the amendments occasioned by the Protection of Freedom Act 2012, in particular, the need to obtain judicial approval to carry out covert surveillance together with the restriction on the type of offence for which directed



surveillance authorisations can be made; namely criminal conduct which would attract on conviction a maximum term of at least six months.

57. Since my last report no applications for directed surveillance have been authorised.

## CONCLUSIONS AND COMMENTS

58. The Monitoring Officer's role encompasses both proactive and reactive elements. The proactive role centres on raising standards, encouraging ethical behaviour, increasing awareness and utilisation of the elements of good governance and ensuring that robust procedures are in place across the whole of the Council.

59. The reactive role focuses on taking appropriate action to deal with issues and potential problems as they arise. The Monitoring Officer's effectiveness in this role is in turn dependent on effective systems and procedures being in place to identify problems and ensure that Members, Officers and public are aware of appropriate channels to raise concerns.

60. Given the changed role of the Committee there is no need to set out a formal work programme. In the light of experience of the standards framework, I would not recommend a review at this point as the table at Para.43 still does not provide sufficient or compelling experience of the new regime to warrant a review.

## 61. IMPLICATIONS

Issue	Implications
Corporate Plan	The role of the Monitoring Officer is pivotal to good governance and providing assurance.
Financial, Resource and Property	The role is part of the Corporate Services Director's duties; he has access to resources within the organisation to enable him to perform his statutory duties. The issue of costs of any investigation under the local arrangements remains a concern although reciprocal arrangements exist between the MKIP partners.
Legal and Statutory	These are set out in Para 2 of the report
Crime and Disorder	Not directly relevant to this annual report
Risk Management and Health and Safety	None directly arising from this annual report.
Hell and well being	None directly arising from this annual report.
Equality and Diversity	The authority's governance framework is underpinned by the Corporate Equality and Diversity Policy and procedures

## **RECOMMENDATIONS**

62. That:

- The Standards Committee notes this report.
- There be no further action to review the regime at the present time.

**Mark Radford**  
**Corporate Services Director & Monitoring Officer**

Date: November 2016